KAM SENG REALTY SDN BHD A

v.

PEMUNGUT HASIL TANAH KUALA LUMPUR

HIGH COURT MALAYA, KUALA LUMPUR B
AZMEL MAAMOR J
[LAND REFERENCE NO: S2-15-A9-1981]
8 AUGUST 2005

CIVIL PROCEDURE: *Costs - Application for - Whether costs can be allowed when not prayed for - Whether costs should be allowed against a person exercising a quasi-judicial function - Whether Pemungut Hasil Tanah should be subjected to payment of costs in land acquisition proceedings* C

LAND LAW: *Acquisition of land - Compensation - Quantum of compensation to be based on market value at date of declaration - Whether proper to use earlier purchase price of acquired land as basis for determining market value at date of declaration - Whether fact that acquired land has no planning permission would affect the market value and amount of compensation payable - Land Acquisition Act 1960, s. 8* D

LAND LAW: *Acquisition of land - Compensation - Assessment by learned judge - Weight to be given to comparables based on similarities between the comparables and acquired land* E

A rubber estate known as New Amherst Estate situated in Mukim Setapak, Kuala Lumpur was the subject matter of acquisition by the F
Government. The landowner claimed that the market value of the land should be RM25,157,949 per acre. However the compensation awarded by the Land Administrator for the acquired land amounted to RM3,950,453.60 which worked out to RM4,000 per acre. The matter was then referred to the High Court by the Land Administrator. The G
landowner/applicant's grounds of objection were, *inter alia*, that the amount of the award did not reflect the market value. Both parties had mutually agreed to have the case proceeded without the requirement of the presence of the two assessors. The applicant had orally applied for the costs of the proceedings on the day of the decision of the case. H

Held:

(1) The quantum of compensation to be awarded in respect of the acquired land must be based on its market value at the date the declaration pursuant to s. 8 of the said Act is published in the I
Gazette and in this particular case as at 1 February 1973. The sale

of Wardieburn Estate appeared to be the best comparable as there were many similarities between the New Amherst Estate and the Wardieburn Estate. (paras 11 & 14)

(2) It was completely improper for the respondent to use the formula using the purchase price of the acquired estate in 1967 as the basis for determining its market value in 1973 and giving a standard increase in price every year from 1967 to 1973 thereby arriving at the increase of RM4,000 per acre as the market value of the acquired land. (pata 17)

(3) Planning permission had been granted to the Wardieburn Estate at the time of sale whereas no such permission had been granted to the acquired land. But to conclude that Government would not grant development approvals to the acquired land would be completely misconceived in the light of the existence of Government policy to develop lands especially around Kuala Lumpur. Obtaining such development approval would be just a matter of time. The sale price of the Wardieburn Estate was RM30,500 per acre. Based on these circumstances, coupled with the expenses that may be incurred in obtaining development approvals, the fair market value of the acquired land should be RM20,000 per acre. (para 19)

(4) The prayer for costs of the proceedings was rejected because it was not prayed for by the applicant in any of the documents filed in court. Further, the respondent, being the Pemungut Hasil Tanah, should not be subjected to payment of costs having regard to the fact the respondent was exercising his quasi-judicial function in making the award. It is very odd and highly improper that a person exercising a quasi-judicial function akin to that exercised by a judge should be subjected to such embarrassment as payment of costs for making a quasi judicial decision which he personally has nothing to gain by it. He should not be so subjected, unless such decision was done with malice or *mala fide*. Even under such circumstances, to impose costs against him would not be the appropriate course of action to take. (para 20)

Case(s) referred to:

Ng Tiou Hong v. Collector of Land Revenue, Gombak [1984] 1 CLJ 350; [1984] 1 CLJ (Rep) 289 FC ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 8, 40, 48

For the applicant - Robert Lazar; M/s Shearn Delamore & Co
For the respondent - Hazlina Harun; State Legal Adviser Department, Selangor

Reported by Amutha Suppayah

JUDGMENT

Azmel Maamor J:

Background

[1] A rubber estate known as New Amherst Estate situated in Lots 18 and 19 Geran 897 and Lot 80 Geran 1980, Mukim Setapak, Kuala Lumpur was the subject matter of acquisition by the government for the purpose of *"Tapak Institut Teknologi Kebangsaan"*. The area that was acquired was 981 acres 2 rods 21.18 poles (the acquired land). The date of acquisition was 1 February 1983, being the date the declaration on Form D was published in the gazette pursuant to s. 8 of the Land Acquisition Act 1960 (the said Act).

[2] The landowner claimed that the market value of the land should be RM25,157,949 per acre. However the compensation awarded by the land administrator for the acquired land amounted to RM3,950,453.60 which works out to RM4,000 per acre.

[3] As the landowner was dissatisfied with the award the matter was then referred to the High Court by the land administrator on 28 November 1981. The landowner/applicant's grounds of objection were:

1. The amount of the award did not reflect the market value;
2. The award given did take into consideration the potential development of the land resulting from the shortage of land for development;
3. The award did not take into consideration the loss of income from the increase in the price of rubber; and
4. The award did not take into consideration the loss of other benefits of the landowner.

[4] There is an apparent delay in the conclusion of the hearing of this case in the High Court. However, going through the record in the file it is found that there had been application by way of usul pemula by the applicant for an order to set aside the award of the land administrator. On 10 September 1982 Hashim Yeop Sani J (as he then was) allowed a stay of proceedings until the completion of the usul pemula.

[5] The usul pemula was only heard and decided by Mohd. Eusoff Chin J (as he then was) on 5 October 1989 rejecting the application. An appeal against that decision was lodged to the Mahkamah Agong. On 12 November 1990 Mahkamah Agong dismissed the appeal.

[6] By this time the High Court in Shah Alam Selangor had been established. The Selangor State Legal Adviser had made attempts to transfer the case to be heard at Shah Alam High Court since this matter took place in the state of Selangor. However it was finally decided that the case should continue to be heard at Kuala Lumpur High Court.

[7] Parties to this case then began to negotiate for a settlement thereby causing the hearing of the case to be postponed several times. The pursuit for settlement continued even after the file was handed to me in 2002. However no settlement could be reached by the parties. Immediately after the parties informed me that they could reach settlement I fixed the date for hearing.

[8] The only issue to be determined is in respect of the quantum of compensation. Under the laws that existed at the time of acquisition such issue must be heard by the judge and assisted by two assessors (as required by s. 40 of the said Act). Since then the laws have been amended. The list of assessors appointed by the government as of 1973 to assist the Judge to hear such cases could no longer be made available. The present list of assessors now available with the Selangor State Government deals with the existing laws which differ from those that prevailed in 1973. In the light of the inability of empanelling the assessors both parties have mutually agreed to have this case proceeded without the requirement of the presence of the two assessors. I therefore proceeded to hear this case alone without the assistance of the two assessors.

The Proceedings

[9] It was agreed by counsels of both parties that fresh valuation reports be produced by both parties and that the valuation officer be allowed to be cross-examined. Counsels for both parties indicated to me that they did not wish to call any other witnesses. At the resumed hearing the respondent tendered two additional valuation reports, R6 and R7 while the applicant submitted only one valuation report, P8. Earlier on, however, both parties had tendered their valuation reports. In all the applicant tendered four valuation reports namely, P1, P2 P3 and P8 and the respondent also tendered four valuation reports, namely, R4, R5, R6 and R7. Subsequently I also received the written submission of counsels for both parties.

[10] After having carefully considered the facts and circumstances of this case in the light of all relevant matters including the valuation reports and submissions of counsels of both parties I arrived at the conclusion that the award for the compensation of the acquired land should be increased to RM20,000 per acre. My reasons for arriving at this decision are as follows.

Reasons For Decision

[11] It is provided in law that the quantum of compensation to be awarded in respect of the acquired land must be based on its market value at the date the declaration pursuant to s. 8 of the said Act, is published in the gazette and in this particular case as at 1 February 1973.

[12] The principles applicable in determining what is the market value of the particular land acquired had been succinctly explained in Federal Court case of *Ng Tiou Hong v. Collector of Land Revenue, Gombak* [1984] 1 CLJ 350; [1984] 1 CLJ (Rep) 289 FC, as follows:

> First, market value means the compensation that might be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The elements of willingness or sentimental value on the part of the vendor to part with the land and the urgent necessity of the purchaser to buy have to be disregarded and cannot be made a basis for increasing the market value. It must be treated on the willingness of both the vendor to sell and the purchaser to buy at the market price without any element of compensation.
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> Secondly, the market price can be measured by the consideration of the prices of sales of similar lands in the neighbourhood or locality and of similar quality and positions.
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> Thirdly, its potentialities must be taken into account. The nature of the land and the use of which it is being put at the time of acquisition have to be taken into account together with the likelihood to which it is reasonably capable of being put to use in the future eg, the possibility of it being used for building and other developments.
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> Fourthly, in considering the nature of the land regard must be given as to whether its locality is within or near a developed area, its distance to or from a town, availability of access road to and within it or presence of a road reserve indicating a likelihood of access to be constructed in the near future, expenses that would likely be incurred in levelling the surface and the like.
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> Fifthly, estimates of value by experts and undoubtedly some evidence but too much weight should not he given unless it is supported by, or coincides with, other evidence.

[13] The Federal Court in the same case also laid down the following guide in determining the market value of the acquired land:

> The safest guide is the evidence of similar lands of similar quality or position in the locality at or prior to the time of acquisition. The prices paid for such sales can be used as comparable subject to making allowances for all the circumstances.

[14] After having examined the various comparables set out by the Government Valuer as well as the Private Valuer 1 was of the view that the sale of Wardieburn Estate appeared to be the best comparable as there were many similarities between the New Amherst Estate that was acquired and the Wardieburn Estate, namely:

1. The difference in time between the sale of the Wardieburn Estate and the date of acquisition of the acquired land was only 19 days. The sale of the Wardieburn Estate was 19 February 1973 whereas the date of acquisition of the acquired land was 1 February 1973;

2. There was closeness in the size of the two properties. The size of the Wardieburn Estate is 834 acres whilst the size of the acquired land was approximately 988 acres.

3. Both lands were formerly rubber estates.

4. Both estates are situated in the Mukim of Setapak with a distance of only about 2,000 feet between each other.

5. Both estate are titles in perpetuity.

6. Both estate have road access.

7. Both estates are close to Kuala Lumpur with a distance between 7 to 9 miles away.

[15] I am unable to accept the respondent's contention that the sale of the Wardieburn Estate should not be used as a comparable for determining the market value of the acquired land on the ground that the "Wardieburn is ripe for development, as it has planning consent for development, whereas Amherst Estate (the acquired land) is not." I am of the considered view that it would be completely wrong and unfair to reject in toto the sale of the Wardieburn Estate as a comparable having regard to the fact that there are many similarities between the acquired land and the Wardieburn Estate. The lack of planning consent may be used as a factor in determining the actual quantum of the compensation to be awarded.

[16] Looking at the whole circumstances of this case it is my view that using the purchase price of the Amherst Estate when it was purchased on 26 August 1967 as the basis for determining the market value of the acquired land would not be proper and just. My reasons are as follows.

[17] The period between 1967 and 1973 saw circumstances which caused contrasting effects on the market value of landed property particularly in Kuala Lumpur. Firstly there was the May 13 incident in 1969. It had caused a drastic drop in the market value of landed property. Subsequently in 1972 the government had formulated a policy encouraging the public to develop landed property which resulted in a sharp increase in the market value of land from that year. This means the increase in the market value of land from 1967 to 1973 could not be said to be a gradual increase. In the light of the above circumstances it would be completely improper for the respondent to use the formula using the purchase price of the acquired in 1967 as the basis for determining its market value in 1973 and giving a standard increase in price every year from 1967 to 1973 thereby arriving at the increase of RM4,000 per acre as the market value of the acquired land. I was therefore unable to accept the formula used by the respondent.

[18] In the light of the circumstances of this case I was of the view that the best approach would be to make use of the sale of the Wardieburn Estate as the basis to determine the market value of the acquired land.

[19] I have taken into consideration that Wardieburn Estate was located within the Greater Kuala Lumpur Master Plan whereas the acquired land is not. However I cannot ignore the fact that the acquired land was only 2,000 meters from the Wardieburn Estate. I have also taken into consideration that planning permission had been granted to the Wardieburn Estate at the time of sale whereas no such permission had been granted to the acquired land. But to conclude that government would not grant development approvals to the acquired land would be completely misconceived in the light of the existence of government policy to develop lands especially around Kuala Lumpur. Obtaining such development approach would be just a matter of time, possibly between two to three years. The sale price of the Wardieburn Estate was RM30,500 per acre. Based on the circumstances as I have stated above coupled with the expenses that may be incurred in obtaining development approvals I arrived at the conclusion that the fair market value of the acquired land should be RM20,000 per acre which I hereby ordered. As such I set aside the award of the respondent of RM4,000 per acre and increased it to RM20,000 per acre. In addition, pursuant to s. 48 of

the Land Acquisition Act 1960 I also allow interest on the excess sums that ought to have been awarded by the respondent at the rate of 6% per annum from the date on which the respondent took possession of the acquired land ie, 10 August 1977 to the date of payment.

On the issue of costs of this proceedings which the counsel for the applicant orally applied on the day of the decision of this case I decided to reject it because it was not prayed for by the applicant in any of the documents filed in court. What troubled me more is why should the respondent, being the Pemungut Hasil Tanah, be subjected to payment of costs having regard to the fact the respondent was exercising his quasi-judicial function in making the award. It strikes me as very odd and highly improper that a person exercising a quasi-judicial function akin to that exercised by a Judge should be subjected to such embarrassment as payment of costs for making a quasi judicial decision which he personally has nothing to gain by it. In my view he should not, unless such decision was done with malice or *mala fide*. Even under such circumstances to impose costs against him would not be the appropriate course of action to take.